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INDEX

CITATIONS

118860—39——1

In the Supreme Court of the United States

OCTOBER TERM, 1938

No. 359

HUGH ALLEN BOWEN, PETITIONER

v.

JAMES A. JOHNSTON, WARDEN, UNITED STATES PENITENTIARY, ALCATRAZ, CALIFORNIA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 27–32) is reported in 97 F. (2d) 869.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered June 27, 1938 (R. 32). The petition for a writ of certiorari was filed in this Court on September 16, 1938, and was granted on October 10, 1938 (R. 33). The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

This Court in granting the petition for a writ of certiorari limited its review to "the question of the jurisdiction of the District Court on habeas corpus" (R. 33).[1] In the light of the petition and return, the opinion of the court below, and the petition for certiorari, the question presented, as we conceive it, is the following:

1. Whether the District Court on habeas corpus had jurisdiction to determine the question of the

[1] The petition for a writ of certiorari was not served on the Solicitor General before it was granted. There would seem to be no question as to the jurisdiction of the District Court in the instant case to entertain the petition for a writ of habeas corpus, filed in the United States District Court for the Northern District of California, which alleged that the petitioner was in prison and illegally restrained of his liberty by the Warden of the United States Penitentiary, Alcatraz, California, within the jurisdiction of that District Court (R. 1). The return (R. 16–17) to the order to show cause why a writ of habeas corpus should not be issued (R. 16) averred that the petitioner was detained by the warden under a sentence and order of commitment of the United States District Court for the Northern District of Georgia and a transfer order issued for the Attorney General of the United States by the Director of the Bureau of Prisons of the United States Department of Justice. Certified copies of the sentence, order of commitment, and transfer order were annexed to and made a part of the return. The petitioner consequently was within the territorial jurisdiction of the United States District Court for the Northern District of California (R. S. 752, as amended, *infra*, p. 38) and was in custody "under or by color of the authority of the United States" (R. S. Sec. 753, *infra*, p. 38).

exclusive jurisdiction of the United States over the National Park in which the crime charged was alleged to have been committed.

Disposition of the appeal after determination of the question presented possibly may involve consideration of two additional questions:

2. If the District Court on habeas corpus had jurisdiction to determine the question of exclusive jurisdiction of the United States, whether the petition for a writ of habeas corpus was sufficient to require exercise of that jurisdiction.

3. Whether the State of Georgia ceded exclusive jurisdiction of the National Park to the United States.[2]

STATUTES INVOLVED

The pertinent statutes are copied in the Appendix, *infra*, pp. 38–43.

STATEMENT

The instant case was decided by the District Court on the basis of the petition for a writ of habeas corpus and the return to an order to show cause why the writ should not be issued.

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[2] Some of the several other grounds for habeas corpus alleged in both the petition for habeas corpus and the petition for certiorari possibly might be considered to involve a "question of the jurisdiction of the District Court on habeas corpus" and therefore are also discussed briefly, Point IV, *infra*, p. 34, but, as we understand it, these questions probably are not involved on this review.

The petition (R. 1–9)[2] which was filed on September 25, 1937, alleges that the petitioner is illegally restrained of his liberty by the respondent for a number of reasons set forth in four groups, as follows:

1. The first group (R. 1–3) alleges in general terms that the indictment failed to charge any crime against the United States, that its allegations were insufficient to show jurisdiction over the person and subject matter; and then, principally—

> That the indictment is defective and void and any verdict and judgment rendered thereon are fatally defective and void for that it was necessary for the United States District Court to show jurisdiction over the person of the defendant, of the crime charged, and of the exact territory or place where it was alleged to have been committed, to wit, Chickamauga National Park otherwise than by showing or alleging that it was committed within the jurisdiction of the court without fixing a definite place or location or even the county where committed and without attempting to show exclusive jurisdiction over this national park otherwise than by merely averring that said jurisdiction had been conferred upon the United States Courts as follows: "And within the jurisdiction of said court and within a cer-

[2] The petition for writ of certiorari filed in this Court contains a number of alleged grounds for habeas corpus which are not contained in the petition for a writ of habeas corpus or elsewhere in the record.

tain place and on certain lands reserved and acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof, and acquired by the United States *States* by consent of the legislature of the State of Georgia."

That no exclusive jurisdiction over said Chickamauga National Park could be so granted by mere consent of the legislature of the State of Georgia, and that to confer and release exclusive criminal jurisdiction to the United States, it would be necessary that the territory, place or places be regularly ceded to the United States by the State of Georgia and that for this reason the indictment was fatally defective even in the absence of a demurrer and no legal judgment or sentence could be based thereon.

That said indictment is void because it does not set forth verbatim or in substance any consent or act of the legislature of Georgia ceding or seeking to cede criminal jurisdiction to the United States, the territory and lands referred to in the indictment, any such consent or act being a local law when taken in connection with federal procedure, which is necessary to be pleaded.

2. The second group of reasons (R. 3–6) for the issuance of the writ asserts that petitioner was denied due process of law because the indictment did not sufficiently allege the offense charged, did not allege a common design and purpose of the three defendants to murder the deceased, guilty knowledge or criminal purpose, the time, place,

and circumstances of the alleged crime, or that the killing was done feloniously; because the case was transferred from the Atlanta to the Rome Division of the District Court for the Northern District of Georgia without petitioner's consent and because he was tried in a county of the State of Georgia in which no part of the Chickamauga National Park was located; because the petitioner was not furnished with a copy of the indictment and a list of witnesses prior to the trial; because no stenographic copy of the testimony was made and preserved, so that the petitioner "might hope to appeal"; and because under the allegations in the indictment only one of the defendants could be guilty of the crime.

3. In a third subdivision of his petition (R. 6–8) petitioner asserts that since it is the policy of the Federal courts to regard habeas corpus as "a matter of grace," the petitioner was entitled to his discharge because his co-defendant Smith had made a voluntary unsolicited statement that petitioner had nothing to do with the commission of the murder and that he killed the deceased while the petitioner was asleep in an automobile, without the petitioner having any knowledge of the murder until after it was committed; because the instant case was a proper one in which to issue the writ even though there had existed a remedy by appeal; because a certified copy of the indictment furnished to the petitioner by the Clerk of the United States District Court for the Northern District of Georgia

"carries no verdict and no judgment or sentence, the spaces and places allotted therefor are wholly blank with nothing written thereon"; "Because the United States has no exclusive jurisdiction over Chickamauga National Park"; because of the petitioner's good conduct since his confinement and a statement by the trial court in a letter to the petitioner's mother expressing his attitude with respect to the petitioner's release by commutation or pardon; and because the petitioner was convicted upon purely circumstantial evidence.

4. The final subdivision of the petition (R. 8–9) sought the petitioner's discharge on the grounds of his youth and inexperience at the time the crime was committed, his conviction upon circumstantial evidence, his desire to be with and to provide for his daughter and mother, and his alleged innocence of the charge.

The exhibits attached to the petition are a certified copy of the indictment with certain entries on the back thereof (R. 9–12); two affidavits of prisoners in the Atlanta Penitentiary respecting a conversation with the petitioner's co-defendant Smith which indicated that the petitioner was asleep and drunk at the time the actual killing took place (R. 12–14); a letter from the trial judge to the petitioner's mother (R. 15).[1]

[1] A statement of facts and brief of law, apparently submitted by the petitioner in connection with his petition, was omitted in printing (R. 15).

Omitting formal parts, the indictment against the petitioner, which was returned in November 1931 by a grand jury in the United States District Court for the Northern District of Georgia, Atlanta Division, charged (R. 9–10):

> that John E. Smith, alias John Eddington, Hugh A. Bowen, alias Hugh Allen, alias Henry Boss, and William Frank Bowen, alias Frank Bowen, hereinafter called the defendants, on the 14th day of December, in the year 1930 A. D. in the Rome Division of the District aforesaid, and within the jurisdiction of said court, and within a certain place and on certain lands reserved and acquired for the exclusive use of the United States and under exclusive jurisdiction thereof, and acquired by the United States by consent of the Legislature of the State of Georgia, to wit: Chickamauga and Chattanooga National Park, sometimes known as Chickamauga and Chattanooga National Military Park, in said State of Georgia did then and there unlawfully, willfully, deliberately and with malice aforethought upon one, Raymond Kington, a human being, make an assault and did then and there him, the said Raymond Kington, unlawfully, willfully, deliberately, maliciously, premeditatedly and with malice aforethought kill and murder by shooting and wounding him, the said Raymond Kington, in the head, neck and face with a certain loaded shotgun, a more perfect description of said shotgun being to the grand jurors unknown, then

> and there held in the hands of one of said defendants but which particular one of said defendants is to the grand jurors aforesaid unknown, the said loaded shotgun being then and there an instrument likely to produce death, and said defendants did thereby inflict, cause and produce a certain mortal wound and wounds in the head, neck and face of him, the said Raymond Kington, from which mortal wound and wounds by the said defendants so inflicted aforesaid, he, the said Raymond Kington, on the 14th day of December A. D. 1930, did then and there die. * * *

In response to the petition for writ of habeas corpus, an order was entered by the District Court directing the Warden of the Penitentiary to show cause why the writ should not be issued (R. 16).

Pursuant to this order the Warden filed a return (R. 16–17) stating that the petitioner was detained under and by virtue of a judgment and sentence, and order of commitment issued by the United States District Court for the Northern District of Georgia, Rome Division, and a transfer order issued for the Attorney General by the Director of the Bureau of Prisons of the United States Department of Justice. The return prayed that the petition be dismissed (R. 16–17). Certified copies of the judgment and sentence, order of commitment, transfer order, and "record of Court Commitment United States Penitentiary, Alcatraz, California," were annexed to the return as

exhibits and made a part of such return (R. 17–22a).[5]

These documents annexed to the return disclose that on February 6, 1933, the petitioner entered a plea of not guilty to the indictment and went to trial before District Judge E. Marvin Underwood of the District Court for the Northern District of Georgia, Rome Division (R. 18). On February 11, 1933, the jury returned a verdict of guilty without capital punishment (R. 18). On February 16, 1933, the petitioner was sentenced to life imprisonment in such penitentiary as the Attorney General of the United States might designate (R. 18–19). On August 15, 1934, by order of the Director of the Bureau of Prisons of the Department of Justice of the United States, issued on behalf of the Attorney General, the petitioner was transferred from the United States Penitentiary at Fort Leavenworth, Kansas, to the United States Penitentiary at Alcatraz, California (R. 20–21).

On October 9, 1937, the case came on for hearing on the order to show cause. No appearance was made by the attorneys for the petitioner. An Assistant United States Attorney appeared on behalf of the Warden and filed the return to the order to show cause. On motion of the Assistant United States Attorney the petition was submitted. On October 11, 1937, the District Court entered an

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[5] A memorandum of points and authorities against the petition for a writ of habeas corpus, submitted on behalf of the respondent, was omitted in printing (R. 23).

order denying the petition for a writ of habeas corpus (R. 23).

An appeal was then taken by the petitioner to the Circuit Court of Appeals for the Ninth Circuit (R. 24–25). The case apparently was submitted to that court on briefs without oral argument. In addition, counsel for the respondent was granted leave to file copies of the Georgia and Federal statutes which might be involved (R. 26).

The order of the District Court denying the petition for habeas corpus was unanimously affirmed by the Circuit Court of Appeals (R. 32).

In its opinion the Circuit Court of Appeals stated (R. 28) that the petitioner's principal claim was that the District Court in which he was tried had no jurisdiction over the Park in which it was alleged the crime was committed for the reason that jurisdiction over such area could not constitutionally have been ceded to the United States and, in fact, was not so ceded, and that the indictment was defective in not alleging the details of such cession to the United States by the State of Georgia.

As to these principal contentions the court below held that on collateral attack in habeas corpus the judgment is valid unless the lack of jurisdiction appears on the record; that in this case if the United States constitutionally could acquire jurisdiction over the Park, lack of jurisdiction did not affirmatively appear on the record,[6] and the further

[6] The only part of the "record of conviction" in the trial court which was before the District Court in the instant

question whether in fact the United States did have such jurisdiction over the Park and over the defendant becomes a seriously controverted question of law and fact to be determined by the trial court, which cannot be questioned on habeas corpus; and that *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, determined the existence of the constitutional power of the United States to acquire and exercise exclusive jurisdiction over a national park such as Chickamauga and Chattanooga National Park (R. 28–31).

The court below also held that the contention of the petitioner that the indictment was defective in not describing with particularity the place of the commission of the crime could not be raised on habeas corpus. The court held to be without merit the contention that the indictment did not charge that the petitioner committed a crime against the United States because all three defendants could not be guilty of murdering one man with a shotgun and the contention that the indictment was defective because it failed to allege that the killing was done feloniously (R. 31–32).

As to the other objections urged by the petitioner, the court held that they were "wholly in-

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habeas corpus proceedings consisted of certified copies of the indictment, judgment, and sentence and order of commitment. It was for this reason that the court below of necessity looked to the indictment in determining whether the record affirmatively disclosed that the crime charged was not one within Federal cognizance.

sufficient in point of law and call for no discussion" (R. 32).

The petition for a writ of certiorari asserts (pp. 6–8) as reasons for granting the writ (1) that the decision of the court below that habeas corpus will not lie is in direct conflict with decisions of this Court, (2) that the decision below, while not holding a State cannot qualify its grant of jurisdiction to the United States, "left such an inference" and is probably not in harmony with decisions of this Court, (3) that the decision of the court below, that where it appears from the record that the court did have jurisdiction, though such jurisdiction was expressly reserved to the State by the legislative act of cession, the record cannot be examined, is probably in conflict with decisions of this Court, and (4) that the decisions of this Court discussing the language of an indictment charging the offense with particularity indicate that the decision of the court below is probably in conflict with the decisions of this Court.

SUMMARY OF ARGUMENT

I. The District Court on habeas corpus had no jurisdiction to inquire into the question of whether the locus of the crime, the Chickamauga and Chattanooga National Park, was within the jurisdiction of the United States. Exclusive jurisdiction, being a necessary element for Federal cognizance of the offense, involved an issue of law and fact triable only by the trial court and reviewable only

on appeal. *Louie* v. *United States,* 254 U. S. 548; *Pothier* v. *Rodman,* 261 U. S. 307, *Rodman* v. *Pothier,* 264 U. S. 399.

II. Even if the petitioned court had jurisdiction to inquire whether the United States had exclusive jurisdiction, so as to bring the offense within Federal cognizance, the judgment of the trial court is presumed to be valid unless it affirmatively appears from the record that the court was without jurisdiction. The indictment alleges that the offense was committed within a place under the exclusive jurisdiction of the United States. The unsupported allegation in the petition that "the United States had no exclusive jurisdiction over Chickamauga National Park" was not an affirmative showing of lack of jurisdiction sufficient to rebut the presumption of verity in favor of the allegation of the indictment and the validity of the judgment.

III. In any event, the United States did have exclusive jurisdiction over the locus of the crime, the Chickamaugua and Chattanooga National Park, by virtue of the Georgia statute of 1927 ceding exclusive jurisdiction to the United States.

IV. The petitioner's other alleged grounds for habeas corpus are without merit.

ARGUMENT

This brief is confined to the case and the record made by the petition for a writ of habeas corpus and the return to the order to show cause why such a writ should not be issued and the documents an-

nexed thereto, on the basis of which the District Court denied the petition for a writ of habeas corpus.[7] The petitioner's attorneys did not appear at the hearing on the order to show cause and there was no testimony taken.

The indictment charged murder in the Chickamauga and Chattanooga National Park within the jurisdiction of the District Court and on land acquired for the exclusive use of the United States and under the exclusive jurisdiction thereof (R. 9–10). Section 272 of the Criminal Code (Title 18, U. S. C., Sec. 451) provides:

> The crimes and offenses defined in this chapter shall be punished as herein prescribed:
>
> * * * * *
>
> Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for

[7] The petition for a writ of certiorari contains many statements of fact and contention which do not appear in the petition for a writ of habeas corpus or elsewhere in the record. For example, it is stated in the petition for certiorari (p. 3) that at the time of the trial petitioner produced testimony by two surveyors to show that the crime was not committed within the limits of the Chickamauga and Chattanooga National Park, that the deceased's body was found more than 200 yards from the nearest boundary of the Park, and that no testimony was offered by the Government to refute these statements.

> the erection of a fort, magazine, arsenal, dockyard, or other needful building.

Sections 273 and 275 of the same chapter of the Criminal Code (U. S. C., Title 18, Secs. 452, 454) define the crime of murder and provide for its punishment. (See *infra*, p. 39.)

The petition for a writ of habeas corpus sets forth two principal groups of reasons why the petitioner's detention is illegal. The first group relates to the alleged insufficiency of the indictment to show jurisdiction of the District Court (*supra*, p. 4) and the second group is based upon the alleged denial of due process of law (*supra*, p. 5).

The principal allegations of the petition with respect to exclusive jurisdiction of the United States found in the first group of reasons do not in terms allege that the State of Georgia could not or did not in fact cede exclusive jurisdiction to the United States, but merely allege that the indictment is void because it does not show exclusive jurisdiction otherwise than by averring exclusive jurisdiction to have been acquired by consent of the legislature of the State of Georgia, that exclusive jurisdiction could not be granted by mere consent of the legislature but must be regularly ceded, and that the indictment fails to set forth *verbatim* or in substance any consent or act of the legislature of Georgia ceding criminal jurisdiction which must be pleaded (R. 2, 3). Apparently the petitioner contended under these allegations that the indict-

ment as a matter of pleading should have set forth the statutes of Georgia ceding the exclusive jurisdiction. That contention seems unfounded even if raised by demurrer to the indictment, but apart from this question certainly it is not a valid ground for collateral attack upon the indictment in habeas corpus. *Knewel* v. *Egan,* 268 U. S. 442, 446; *United States* v. *Pridgeon,* 153 U. S. 48; *Cuddy, Petitioner,* 131 U. S. 280.

In the third group of reasons, however, the petition does allege that the petitioner should be discharged "Because the United States has no exclusive jurisdiction over Chickamauga National Park" (R. 7). The court below stated that the petitioner's principal claim is that the District Court had no jurisdiction over the Park in which the crime was alleged to have been committed because jurisdiction over that area could not constitutionally be, and in fact was not, ceded to the United States by the State of Georgia.

Accepting, *arguendo,* this interpretation of the petition by the court below, the respondent believes that this is the petitioner's only substantial contention and that the question of the jurisdiction of the District Court on habeas corpus to determine whether in fact the United States obtained exclusive jurisdiction over the Park is "the question of the jurisdiction of the District Court on habeas corpus" to which review has been limited (R. 33).

The respondent also contends that even if the

District Court on habeas corpus had jurisdiction to determine whether in fact the United States obtained exclusive jurisdiction, the meager allegations of lack of exclusive jurisdiction in the petition for a writ of habeas corpus, unsupported by any showing in support of these allegations, are wholly insufficient to require the District Court on habeas corpus to exercise its jurisdiction and the denial of the petition was correct on that ground.

Moreover, even if the District Court had jurisdiction to consider this question, and even if the allegations of the petition be deemed sufficient to require its consideration, the United States did have exclusive jurisdiction and for that reason the petition may properly be denied.

The petitioner's other contentions, not with respect to the exclusive jurisdiction of the United States, which possibly might be thought to involve the jurisdiction of the District Court on habeas corpus are without merit, *infra*, p. 34.

The respondent contends, therefore, (I) that the District Court on habeas corpus had no jurisdiction to determine the question whether in fact the State of Georgia ceded exclusive jurisdiction of the Park to the United States; (II) even if the District Court had such jurisdiction the allegations of the petition were insufficient to require its exercise; (III) the United States had exclusive jurisdiction; and (IV) the other contentions of the petitioner do not present grounds for habeas corpus.

I

THE DISTRICT COURT ON HABEAS CORPUS HAD NO JURISDICTION TO DETERMINE WHETHER IN FACT THE STATE OF GEORGIA HAD CEDED EXCLUSIVE JURISDICTION TO THE UNITED STATES

Denial of the petition was affirmed by the court below on the ground that the United States could constitutionally acquire exclusive jurisdiction over the National Park involved, that, therefore, lack of jurisdiction did not affirmatively appear upon the record in the criminal case, and that the further question whether in fact the United States did have such jurisdiction over the Park is a seriously controverted question of law and fact which can not be questioned on habeas corpus (R. 29–30).

It is clear that the United States constitutionally could acquire exclusive jurisdiction over the Park. *Collins* v. *Yosemite Park Co.*, 304 U. S. 518.* The question remains whether the court below properly refused to go further and correctly determined that the District Court on habeas corpus lacked jurisdiction to decide the further question whether in fact the United States had obtained exclusive jurisdiction over the Park.

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*The court below took the view that it had jurisdiction on habeas corpus to determine this constitutional question on the ground that if the United States could not constitutionally acquire exclusive jurisdiction over a National Park the lack of jurisdiction would thus affirmatively appear on the face of the record and the judgment, therefore, would be subject to collateral attack on habeas corpus.

It is settled that habeas corpus calls in question only the jurisdiction of the court whose judgment is challenged. It is fundamental that a court upon which is conferred jurisdiction to try an offense has jurisdiction to determine whether or not that offense is charged or proved. Otherwise, every judgment of conviction would be subject to collateral attack and review on habeas corpus. *Knewell* v. *Egan,* 268 U. S. 442, 445, 446; *Johnson* v. *Zerbst,* 304 U. S. 458, 465, 468.

The scope of review or "jurisdiction" on habeas corpus is limited to an examination of the "jurisdiction" of the court whose judgment is challenged. "Jurisdiction" of the court whose judgment is challenged is stated to mean in criminal cases jurisdiction over the person accused and over the subject matter, that is, over the type of offense charged.* *Knewell* v. *Egan,* 268 U. S. 442, 444; *Felts* v. *Murphy,* 201 U. S. 123, 129; *Valentina* v. *Mercer,* 201 U. S. 131, 138; *Bergemann* v. *Backer,* 157 U. S. 655, 656, 659; *Andrews* v. *Swarz,* 156 U. S. 272, 276; *Ex parte Bigelow,* 113 U. S. 328, 330; *Ex parte Parks,* 93 U. S. 18, 20.

Habeas corpus is also available if the court with jurisdiction over the person and subject matter commits an error which is held to deprive it of

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* The meaning of "jurisdiction" of the court whose judgment is questioned had not become absolutely fixed. *Craig* v. *Hecht,* 263 U. S. 255, 280 (Holmes, J., dissenting), affirming *Ex parte Craig,* 282 Fed. 138, 155–158 (L. Hand, D. J., dissenting); *Henry* v. *Henkel,* 235 U. S. 219, 228.

jurisdiction. *Johnson* v. *Zerbst*, 304 U. S. 458; *Frank* v. *Mangum*, 237 U. S. 309. Habeas corpus may also lie if the judgment rendered is one beyond the power of the court. *In re Bonner, Petitioner*, 151 U. S. 242; *Ex parte Lange*, 18 Wall. 163. These latter grounds for habeas corpus are not involved in the petitioner's objection based on alleged lack of exclusive jurisdiction of the United States.

The petitioner contends in effect that the District Court lacked jurisdiction of the subject matter in this case because the Park in which the offense is alleged to have been committed is not land within the exclusive jurisdiction of the United States. The respondent contends that a controlling distinction must be observed between jurisdiction of the District Court which may be examined on habeas corpus and the exclusive jurisdiction of the United States over the Park. The District Court, with jurisdiction over all Federal crimes committed within the district, had jurisdiction over this crime charged to have been committed within the district upon land alleged to be within the exclusive jurisdiction of the United States. The separate question whether in this particular case the land within the district and so within the territorial jurisdiction of the District Court, was also within the exclusive jurisdiction of the United States "raised a question not of the jurisdiction of that court, but of the jurisdiction of the United States." *Louie* v. *United States*, 254 U. S. 548, 550. The petitioner's

contention is, in effect, that he did not violate the laws of the United States, that his offense was not within Federal cognizance. Exclusive jurisdiction of the United States is an element of the offense and is a question which "went to the merits." *Louie* v. *United States, supra,* 551; *Pothier* v. *Rodman,* 261 U. S. 307, 311; *Rodman* v. *Pothier,* 264 U. S. 399, 402–403.

1. In the *Louie* case, *supra,* the defendant, an Indian convicted of murder of another Indian on an Indian Reservation, under Section 273 of the Criminal Code here involved which requires the offense be committed on land within the exclusive jurisdiction of the United States, objected to the jurisdiction of the District Court on the ground that the land had been allotted and deeded to the defendant in fee simple before the crime was alleged to have been committed. The objection was overruled and on appeal the Circuit Court of Appeals held that the sole question was one of jurisdiction of the District Court reviewable only by direct writ of error from the Supreme Court. This Court held, however, that the question was not one of jurisdiction of the District Court, remanded it to the Circuit Court of Appeals, and stated at pages 550–551:

> The motions made by defendant in the District Court raised a question not of the jurisdiction of that court but of the jurisdiction of the United States. The contention was, in essence, that, by reason of the facts set

> forth in the motions, the defendant was in respect to the acts complained of subject to the laws of the State of Idaho and not to the laws of the United States. In other words that he did not violate the laws of the United States. * * * The defendant, in effect, denied that the killing was, in the statutory sense, within the reservation. If this was true an essential element of the crime against the United States was lacking; * * *
>
> Since defendant's motions in the District Court did not raise a question properly of the jurisdiction of the court but went to the merits, there was no basis for a direct writ of error from this court. * * *

In the *Rodman* case, *supra*, the defendant, indicted for murder on a military reservation within the exclusive jurisdiction of the United States, contested removal on the ground that the United States lacked exclusive jurisdiction over the place in which the crime was alleged to have been committed because no deed to the land had been yet received at the time of the crime.

On direct appeal (261 U. S. 307) to this Court from the order denying the writ this Court, following the *Louie* case, held (page 311) "that the objection raised by the petitioner does not raise a question of jurisdiction" of the district court but "goes to the merits" and transferred the case to the Circuit Court of Appeals. The Circuit Court of Appeals agreed with the petitioner that sov-

ereignty of the State over the tract was not relinquished until the deed was filed in the office of the county auditor and held that there was an absolute want of probable cause for removal. This Court on review (264 U. S. 399) reversed and held that there was probable cause for removal and that whether "the *locus* of the alleged crime was within the exclusive jurisdiction of the United States demands consideration of many facts and seriously controverted questions of law" which "must be determined by the court where the indictment was found," citing *Louie* v. *United States,* 254 U. S. 548.

The court below also cited and relied upon the *Louie* and *Rodman* cases in *Walsh* v. *Archer,* 73 F. (2d) 197, holding that the question whether the locus of the crime, a vessel at a disputed distance off the coast of California, was within the exclusive jurisdiction of the United States could not be raised on habeas corpus. The opinion of the court below in this case quotes from and relies upon the *Archer* decision.

The respondent submits that the court below correctly held on the authority of the *Louie* and *Rodman* cases that the question of exclusive jurisdiction of the United States could not be raised on habeas corpus.

2. The objection of lack of exclusive jurisdiction of the United States over the place where the crime is alleged to have been committed has been often made as the basis for a writ of habeas corpus, but

always without avail. *Rodman* v. *Pothier,* 264 U. S. 399; *Toy Toy* v. *Hopkins,* 212 U. S. 542; *United States* v. *Pridgeon,* 153 U. S. 48; *Hatten* v. *Hudspeth,* 99 F. (2d) 501 (C. C. A. 10th); *Walsh* v. *Archer,* 73 F. (2d) 197 (C. C. A. 9th); *Campbell* v. *Aderhold,* 67 F. (2d) 246 (C. C. A. 5th); *United States* v. *Lair,* 195 Fed. 47 (C. C. A. 8th), certiorari denied, 229 U. S. 609; *Ex parte Savage,* 158 Fed. 205 (C. C. Kans.); *Ex parte Columbia George,* 144 Fed. 985 (C. C. W. D. Wash.).

In *Toy Toy* v. *Hopkins, supra,* an Indian, accused of murder on an Indian reservation within the exclusive jurisdiction of the United States and convicted in the Circuit Court for the District of Oregon, sought release years later on habeas corpus on the grounds that the land on which the crime was committed had been allotted and ceased to be Indian country and that the defendant had become a citizen of the United States subject to the laws of the State of Oregon. Affirming denial of the writ and speaking of these alleged grounds for the writ, this Court stated at page 548:

> If such were the facts, and they made out a want of jurisdiction under the applicable statutes, which on the merits we do not hold, the Circuit Court, nevertheless, was authorized to hear and pass upon those questions in the first instance, and its decision was open to review in the appellate court by writ of error. But it could not be attacked collaterally as absolutely void, and *habeas corpus* cannot be availed of as a writ of error.

The respondent submits that upon these authorities the decision of the court below is correct.

3. It is a settled rule that on habeas corpus any examination of facts outside the record of conviction cannot extend to facts inconsistent with the record. *Riddle* v. *Dyche*, 262 U. S. 333, 336; *In re Mayfield*, 141 U. S. 107, 116; *Cuddy, Petitioner*, 131 U. S. 280, 286. The question whether "the *locus* of the alleged crime was within the exclusive jurisdiction of the United States demands consideration of many facts and seriously controverted questions of law." *Rodman* v. *Pothier*, 264 U. S. 399, 402.

In the present case the indictment alleges that the crime was committed on land within the exclusive jurisdiction of the United States (R. 9–10). Presumably, the question of exclusive jurisdiction was raised by the petitioner's attorney and decided upon the criminal trial.[10] The allegation of the petition that the United States has no exclusive jurisdiction over the Park (R. 7) is inconsistent with the record of the criminal conviction, and for that reason habeas corpus cannot be granted on the ground of lack of exclusive jurisdiction of the United States.

In the *Riddle* case, *supra*, this Court held (p. 334) that a recital in the record that "a jury of good and lawful men" was sworn could not be con-

[10] The petition for habeas corpus does not state, and it does not otherwise appear from the present habeas corpus record, whether the question of the exclusive jurisdiction of the United States was considered.

tradicted by a showing on habeas corpus that the case was tried before a jury of 11 men. Equally in this case the recital of exclusive jurisdiction of the United States cannot be contradicted on habeas corpus.

4. The extraordinary remedy of habeas corpus is reserved for exceptional cases or the single question of the jurisdiction of the district court "and even that will not be decided in every case in which it is raised." *Henry* v. *Henkel*, 235 U. S. 219, 228. The question of exclusive jurisdiction of the United States is not a question of the jurisdiction of the district court (*Rodman* v. *Pothier, supra; Louie* v. *United States, supra*) and certainly this is not an exceptional case. The question of exclusive jurisdiction of the United States is one commonly raised when a crime is charged in which one element is its commission in a place within the exclusive jurisdiction of the United States. This question can readily be litigated in a criminal trial. This Court has repeatedly stated that habeas corpus is not a mere substitute for an appeal. *Johnson* v. *Zerbst*, 304 U. S. 458, 465; *Knewel* v. *Egan*, 268 U. S. 442, 446. This rule applies even if the petitioner fails to avail himself, as in the instant case, of a right of appeal. *Goto* v. *Lane*, 265 U. S. 393; *Craig* v. *Hecht*, 263 U. S. 255, 280.[11]

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[11] While the petitioner alleges, in effect, in his petition for writ of certiorari that he was deprived of his right of appeal through the misconduct of his attorney (Pet. 4–5, 12), no such allegations were incorporated in his petition for writ of

II

THE PETITION FOR A WRIT OF HABEAS CORPUS IS WHOLLY INSUFFICIENT TO WARRANT EXERCISE OF JURISDICTION TO EXAMINE THE QUESTION OF EXCLUSIVE JURISDICTION OF THE UNITED STATES

Even if the District Court on habeas corpus has jurisdiction to determine the question of exclusive jurisdiction of the United States despite the allegation of exclusive jurisdiction in the indictment, which the respondent denies (Point I, *supra*), the question remains whether the petitioner's allegations and proof in any particular case are sufficient to require the court to exercise that jurisdiction. The respondent contends that even if such jurisdiction exists the allegations of the petition in this case were wholly insufficient to require its exercise and the denial of the petition may be supported on that ground.

The indictment alleged that the crime was committed on land within the exclusive jurisdiction of

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habeas corpus. The only allegation in such petition which relates to the matter of appeal is an allegation to the effect that an appeal was frustrated because the District Court refused to have a stenographic copy of the testimony at the trial made and preserved (R. 5). Obviously the review of questions as to the sufficiency of the indictment did not depend upon a stenographic transcript of the testimony at the trial.

the United States (R. 9–10). After judgment and upon collateral attack in habeas corpus the correctness of that allegation of exclusive jurisdiction is supported by the rule that it is presumed that the court acted rightly and had jurisdiction to render its judgment of conviction unless the absence of jurisdiction affirmatively appears on the record (*Knewel* v. *Egan*, 268 U. S. 442, 446; *United States* v. *Pridgeon*, 153 U. S. 48, 59; *Cuddy, Petitioner*, 131 U. S. 280, 285) and by the rule that the record of the trial court imports absolute verity and cannot be contradicted. *Riddle* v. *Dyche*, 262 U. S. 333, 336.

The respondent contends that if any allegations or proof on a petition for habeas corpus could overcome the presumption of correctness of the allegation in the indictment of exclusive jurisdiction of the United States, certainly a very clear showing by the petitioner of lack of exclusive jurisdiction should be necessaray to require the court to exercise jurisdiction to enter upon a consideration of this question on a collateral attack. Allegations of conclusions of law are insufficient to overcome the presumption of jurisdiction. *Cuddy, Petitioner*, 131 U. S. 280, 286.

1. In the present case the allegation that the United States lacked exclusive jurisdiction over the Park (R. 7) is a mere conclusion of law not requiring the District Court on habeas corpus to enter upon an independent consideration of the

question of exclusive jurisdiction of the United States.

2. The other allegations of the petition with respect to exclusive jurisdiction of the United States state that the indictment is void because it does not show exclusive jurisdiction otherwise than by merely averring exclusive jurisdiction to have been acquired by consent of the legislature of the State of Georgia, that exclusive jurisdiction could not be granted by mere consent but must be regularly ceded, and that the indictment fails to set forth *verbatim* or in substance any consent or act of the legislature of Georgia ceding criminal jurisdiction, which is necessary to be pleaded (R. 2–3).

Apparently the petitioner contended under these allegations that the indictment as a matter of pleading should have set forth the statutes of Georgia ceding exclusive jurisdiction to the United States. It has been held, however, that the sufficiency of an indictment cannot be reviewed in habeas corpus proceedings. *Knewel* v. *Egan,* 268 U. S. 442, 446; *United States* v. *Pridgeon,* 153 U. S. 48, 59. The failure to set forth the cession of exclusive jurisdiction more fully, even if possibly it would be a good ground for demurrer to the indictment, is not available on habeas corpus.

3. It was the duty of the District Court to refuse the writ if it appeared from the petition itself that the petitioner was not entitled thereto. R. S., Sec.

755; *Frank* v. *Mangum*, 237 U. S. 309, 332. The respondent submits that, even if a district court has jurisdiction to determine the question of the exclusive jurisdiction of the United States upon a petition overcoming the presumption of jurisdiction and indicating that in fact exclusive jurisdiction of the United States may not exist in the particular case, in the present case the petition is wholly insufficient basis for the exercise of that jurisdiction.

III

THE UNITED STATES DID HAVE EXCLUSIVE JURISDICTION OVER THE PARK

The court below held that it was not within its province on habeas corpus to determine the question whether in fact the State of Georgia had ceded exclusive jurisdiction over the Park in question to the United States. In view of the limitation contained in this Court's grant of certiorari, the respondent believes that this Court does not intend to consider or decide this question.

Even if it be held by this Court that the District Court on habeas corpus had authority to inquire into the question of the exclusive jurisdiction of the United States over the Park, and if it be further held that the petition for a writ of habeas corpus in the instant case was sufficient to require the peti-

tioned court to inquire into such question, and if this Court wishes to consider the question on this appeal instead of remanding it to the court below for that purpose, it appears that the United States in fact did have exclusive jurisdiction over the Park.

The first act of the legislature of the State of Georgia [12] ceding jurisdiction to the United States over the lands embraced within the Chickamauga and Chattanooga National Park did reserve to the State of Georgia "its civil and criminal jurisdiction over persons and citizens in said ceded territory." But in 1927 (Georgia Laws, 1927, p. 352), the State of Georgia ceded exclusive jurisdiction to the United States over all land "which has been or may hereafter be acquired for custom-houses, post-offices, arsenals, other public buildings whatever, or for any other purposes of government." [13] The only condition contained in the 1927 Act is the

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[12] Laws of Georgia, 1890, pp. 3–4, see Appendix, *infra*. pp. 40–42. Subsequent acts of the State of Georgia relating to roads, approaches and additions to the Park contained similar reservations. See Laws of Georgia, 1893, p. 110; Laws of Georgia, 1895, p. 77; Laws of Georgia, 1901, pp. 85–87; Laws of Georgia 1902, p. 110, 113.

[13] See Appendix, *infra*, pp. 42–43.

While Georgia Code, 1933, Section 15–302, effective January 1, 1935, purports to reenact certain restrictive jurisdictional provisions contained in acts before the 1927 statute, this section has no application in the instant case, inasmuch as the offense charged was alleged to have been committed in December 1930 (R. 10).

right of the State to serve on any such land all civil and criminal processes issued under the authority of the State. This condition is not incompatible with exclusive jurisdiction in the United States. *Fort Leavenworth R. R. Co.* v. *Lowe,* 114 U. S. 525, 535; *United States* v. *Cornell,* Fed. Cas. No. 14,867 (C. C. R. I.).

Since the 1927 statute has general operation throughout the State of Georgia and embraces any land acquired by the United States in the State of Georgia for any purposes of government, it follows, we submit, that the 1927 Act impliedly repealed the restrictive jurisdictional provisions of the 1890 Act and was effective to confer upon the United States exclusive jurisdiction over the lands contained in the Chickamauga and Chattanooga National Park. That the United States may constitutionally acquire and exercise exclusive jurisdiction over such a park is settled. *Collins* v. *Yosemite Park & Curry Co.,* 304 U. S. 518. Cf. *United States* v. *Gettysburg Electric Railway Co.,* 160 U. S. 668. Acceptance of such exclusive jurisdiction is presumed. *Fort Leavenworth R. R. Co.* v. *Lowe, supra; Benson* v. *United States,* 146 U. S. 325, 330.

We submit, therefore, a hearing before the petitioned court would reveal that the United States did in fact have exclusive jurisdiction over the place where the offense was committed, i. e., the Chickamauga and Chattanooga National Park.

IV

THE ALLEGATIONS OF THE PETITION FOR A WRIT OF HABEAS CORPUS, OTHER THAN THE ALLEGATIONS OF LACK OF EXCLUSIVE JURISDICTION OF THE UNITED STATES, PRESENT NO GROUNDS FOR HABEAS CORPUS

The respondent believes that the review by this Court "limited to the question of the jurisdiction of the District Court on habeas corpus" (R. 33) does not include review of the various grounds for habeas corpus alleged in the petition other than the alleged lack of exclusive jurisdiction of the United States. But since the question whether any particular alleged ground for habeas corpus is valid may be said to involve the "jurisdiction of the District Court on habeas corpus" to grant the writ on that ground, various alleged grounds set forth in the petition are discussed briefly.

In the second group of reasons (R. 3–6), the petition for a writ of habeas corpus alleges a denial of due process of law because the indictment does not charge the offense with sufficient particularity, a common design of the three defendants to murder the deceased, the guilty knowledge or criminal purpose, the time, place, and circumstances of the alleged crime, or that the killing was done feloniously; because the case was transferred from the Atlanta to the Rome Division of the District Court for the Northern District of Georgia without petitioner's consent; because he was tried in a county

of the State of Georgia in which no part of the Chickamauga National Park was located; because the petitioner was not furnished with a copy of the indictment and a list of witnesses prior to trial; because no stenographic copy of the testimony was made and preserved so that the petitioner "might hope to appeal"; and because under the allegations in the indictment only one of the defendants could be guilty of the crime.

1. With respect to the allegation that the indictment failed to charge the offense with sufficient particularity the court below held, correctly the respondent submits, that this objection was not available on habeas corpus. *Knewel* v. *Egan,* 268 U. S. 442, 446; *United States* v. *Pridgeon,* 153 U. S. 48, 59; *Cuddy, Petitioner,* 131 U. S. 280, 286; *Campbell* v. *Aderhold,* 67 F. (2d) 246 (C. C. A. 5th).

2. The court below also correctly held that the contention that the three defendants could not be guilty of the murder is not valid. *St. Clair* v. *United States,* 154 U. S. 134, 145.

3. The court below also held correctly that the statute in defining a crime does not use the word "felonious" and that the indictment is not required to charge that the offense was committed "feloniously." In defining the crime of murder the statute (Criminal Code, Secs. 273, 274) does not use the term "feloniously." *Myres* v. *United States,* 256 Fed. 779, 782–783 (C. C. A. 5th).

Speaking of the petitioner's other objections, the court below concluded (R. 32):

> The other objections urged by the appellant are wholly insufficient in point of law and call for no discussion.

4. The allegation that a co-defendant has admitted that he alone was guilty of the crime and that the petitioner had no guilty knowledge is no ground for habeas corpus. *Figueroa* v. *Saldana*, 23 F. (2d) 327 (C. C. A. 1st), certiorari denied, 277 U. S. 574.

5. The petitioner did not support the various allegations that the trial court refused to have a stenographic record of the testimony of the trial taken, that the petitioner was denied compulsory process for obtaining witnesses, and that the petitioner was denied the right to appeal as the result of lack of transcript of the testimony. At most these allegations relate to errors and irregularities which did not affect the jurisdiction of the trial court and cannot be corrected on habeas corpus. *Ex parte Harding*, 120 U. S. 782, 784.

In the final analysis it is submitted that the District Court, under all the circumstances of the instant case, properly denied the petition for a writ of habeas corpus. The record did not show on its face that the trial court whose judgment was attacked was without jurisdiction. Aside from the mere general allegations contained in the petition for habeas corpus, there was nothing before the

petitioned court which would indicate that the trial court was without jurisdiction, or that the petitioner was denied any constitutional right which would render the judgment void. The question of the jurisdiction of the trial court involved a determination of an apparently disputed question of law, i. e., whether the State of Georgia had granted to the United States exclusive jurisdiction over the Chickamauga and Chattanooga National Park. Under the decisions we have heretofore cited, a district court on habeas corpus cannot inquire into this disputed question.

CONCLUSION

For the foregoing reasons we respectfully submit that the judgment of the Circuit Court of Appeals should be affirmed.

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JANUARY 1939.

APPENDIX

Revised Statutes, Sec. 751 (U. S. Code, Title 28, Section 451) reads as follows:

> The Supreme Court and the district courts shall have power to issue writs of habeas corpus.

Revised Statutes, Sec. 752 (U. S. Code, Title 28, Section 452) reads as follows:

> The several justices of the Supreme Court and the several judges of the circuit courts of appeal and of the district courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty. A circuit judge shall have the same power to grant writs of habeas corpus within his circuit, that a district judge has within his district; and the order of the circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

Revised Statutes, Sec. 753 (U. S. Code, Title 28, Sec. 453) as far as material, reads as follows:

> The writ of habeas corpus shall in no case extend to a prisoner in jail unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; * * *.

Section 272 of the Criminal Code (Title 18, U. S. C., Sec. 451) in part provides:

> The crimes and offenses defined in this chapter shall be punished as herein prescribed:
>
> * * * * *
>
> Third. When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.

Section 273 of the Criminal Code (Title 18, U. S. C., Sec. 452) provides:

> Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree.

Section 275 of the Criminal Code (Title 18, U. S. C., Sec. 454) provides:

> Every person guilty of murder in the first degree shall suffer death. Every person guilty of murder in the second degree shall be imprisoned not less than ten years and may be imprisoned for life. Every person guilty of voluntary manslaughter shall be

imprisoned not more than ten years. Every person guilty of involuntary manslaughter shall be imprisoned not more than three years, or fined not exceeding $1,000, or both.

Georgia Laws, 1890, p. 344:[1]

Whereas, By section two of the Act of Congress, entitled, "an Act to establish a National Military Park at the battlefield of Chickamauga," approved August 19th, 1890,[2] it is provided that, upon the cession of jurisdiction by the Legislature of the State of Georgia over the lands and roads hereinafter mentioned, and the report of the Attorney-General of the United States that a perfect title has been secured by the United States thereto, under the provisions of the Act of Congress of August 1st, 1888, chapter 728, the lands and roads embraced in the area, bounded as described therein, together with the roads described in section one of said Act, first above mentioned, shall be, and are thereby declared to be, a National Park, to be known as the Chickamauga and Chattanooga National Park; that is to say, the area inclosed by a line, beginning on the Lafayette or State Road, in Georgia, at a point where the bottom of the ravine, next north of the house, known on the field of Chickamauga as the Cloud House, and being about six hundred yards north of said house, due east to the Chickamauga river, and due west to the intersection of the Dry Valley road, at McFarland's Gap; thence along the west side of the Dry Valley and Crawfish Springs roads to the south side of the road from Crawfish Springs to Lee and Gordon's

[1] This Act is also set forth in Laws of Georgia, 1890–1891, pp. 199–200.

[2] The Act referred to is the Act of August 19, 1890, chapter 806, 26 Stat. p. 333 (U. S. C., Title 16, Sec. 424).

Mills; thence along the south side of the last named road to Lee and Gordon's Mills; thence along the channel of the Chickamauga river to the line forming the northern boundary of the park, as hereinbefore described, containing seven thousand and six hundred acres more or less; therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF GEORGIA, That the jurisdiction of this State is hereby ceded to the United States of America over all such lands and roads as are described and referred to in the foregoing preamble to this Act, which lie within the territorial limits of this State, for the purpose of a National Park, or so much thereof as the National Congress may deem best; *provided,* that this cession is upon the express condition that the State of Georgia shall so far retain a concurrent jurisdiction with the United States over said lands and roads, as that all civil and criminal process, issued under the authority of this State may be executed thereon in like manner as if this Act had not been passed; and upon the further express conditions, that the State shall retain its civil and criminal jurisdiction over persons and citizens in said ceded territory, as over other persons and citizens in this State and the property of said citizens and residents thereon, except land and such other property as the General Government may desire for its use, and that the property belonging to persons residing within said ceded territory shall be liable to State and county taxes, the same as if they resided elsewhere; and that citizens of this State, in said ceded territory, shall retain all rights of State suffrage and citizenship; *provided further,* that nothing herein contained shall interfere with the

jurisdiction of the United States over any matter or subjects set out in the Act of Congress establishing said National Park, approved August 19th, 1890; or with any laws, rules or regulations that Congress may hereafter adopt for the preservation and protection of its property and rights in said ceded territory, and the proper maintenance of good order therein; *provided further,* that this cession shall not take effect until the United States shall have acquired title to said lands.

SEC. II. *Be it further enacted,* That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved November 19, 1890.

Georgia Laws, 1927, p. 352:

An Act To provide for the acquisition of land in the State of Georgia by the United States for governmental purposes; to cede jurisdiction to the United States under certain limitations; and for other purposes.

SECTION 1. Be it enacted by the General Assembly of the State of Georgia, and it is hereby enacted by authority of the same, that the consent of the State of Georgia is hereby given, in accordance with the 17th clause, 8th section, and of the 1st article of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, any land in this State which has been or may hereafter be acquired for custom-houses, post-offices, arsenals, other public buildings whatever, or for any other purposes of government.

SEC. 2. Be it further enacted by the authority aforesaid, that the exclusive juris-

diction in and over any land so acquired by the United States shall be and the same is hereby ceded to the United States for all purposes, except that the State retains the right to serve thereon all civil and criminal processes issued under authority of the State; but the jurisdiction so ceded shall continue no longer than the said United States shall own such lands.

SEC. 3. Be it further enacted by the authority aforesaid that the jurisdiction hereby ceded shall not vest until the United States shall have acquired the title to the said lands by purchase, condemnation, or otherwise; and so long as the said lands shall remain the property of the United States when acquired as aforesaid, and no longer, the same shall be and continue exempt and exonerated from all State, county, and municipal taxation, assessment, or other charges which may be levied or imposed under authority of the State.

Approved August 23, 1927.

U. S. GOVERNMENT PRINTING OFFICE: 1939

pp. 2-7

SUPREME COURT OF THE UNITED STATES.

No. 359.—October Term, 1938.

Hugh Allen Bowen, Petitioner,
vs.
James A. Johnston, Warden, United States Penitentiary, Alcatraz, California.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[January 30, 1939.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Petitioner was convicted, in 1933, in the District Court of the Northern District of Georgia, of murder committed in 1930 on the Government Reservation known as the Chickamauga and Chattanooga National Park within the exterior limits of the State of Georgia. He was sentenced to imprisonment for life and is confined in the prison at Alcatraz, California.

In 1937, he presented a petition for a writ of *habeas corpus* to the District Judge of the Northern District of California alleging that the indictment was void, and no legal judgment could be based thereon, as it failed to show jurisdiction over the person and subject matter; that the United States did not have exclusive jurisdiction over the Park.[1] He also alleged that on his trial the court did not have the evidence taken down and preserved so that he might appeal, and that, upon this ground and others, he had been deprived of his liberty without due process of law. A copy of the indictment was annexed to the petition. Pursuant to an order to show cause, the Warden made return showing the judgment and the record of commitment. On the return day there was no appearance of petitioner's attorneys, and no evidence, apart from the return and the attached exhibits, was offered. The petition was submitted and later was denied without opinion. On appeal, the order was affirmed. 97 F. (2d) 860.

The principal contention before the Circuit Court of Appeals was that the United States did not have exclusive jurisdiction over

[1] Criminal Code, Sec. 272, Third; 18 U. S. C. 451.

the Park and hence that the District Court in Georgia did not have jurisdiction to try the petitioner. The court, taking the view that the United States could constitutionally acquire jurisdiction over the Park (*Collins* v. *Yosemite Park Co.*, 304 U. S. 518), held that the question whether the United States did acquire such jurisdiction could not be raised on *habeas corpus*. In view of the importance of the question thus presented, we granted certiorari. October 10, 1938.

First.—Jurisdiction is conferred upon the District Courts "of all crimes and offenses cognizable under the authority of the United States". Jud. Code, sec. 24; 28 U. S. C. 41(2).

Crimes are thus cognizable—

"When committed within or on any lands reserved or acquired for the exclusive use of the United States, and under the exclusive jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building". Crim. Code, sec. 272; 18 U. S. C. 451, Third.

The last clause covers cases where exclusive jurisdiction is acquired by the United States pursuant to Article I, section 8, paragraph 17, of the Constitution.

In the instant case, no question of fact was presented with respect to the place where the crime was committed. The indictment specified the place, that is,—

"a certain place and on certain lands reserved and acquired for the exclusive use of the United States and under exclusive jurisdiction thereof, and acquired by the United States by consent of the Legislature of the State of Georgia, to wit: Chickamauga and Chattanooga National Park, sometimes known as Chickmauga and Chattanooga National Military Park, in said State of Georgia".

The sole question was whether this Park was within the exclusive jurisdiction of the United States. There is no question that the United States had the constitutional power to acquire the territory for the purpose of a national park and that it did acquire it. Whether or not the National Government acquired exclusive jurisdiction over the lands within the Park or the State reserved, as it could, jurisdiction over the crimes there committed, depended upon the terms of the consent or cession given by the legislature of Georgia. *Collins* v. *Yosemite Park Co.*, *supra*, pp. 529, 530. See, also, *James* v. *Dravo* ~~Construction~~ Contracting *Co.*, 302 U. S. 146-148. The fed-

eral courts take judicial notice of the Georgia statutes. *Owings* v. *Hull*, 9 Pet. 607; *Lamar* v. *Micou*, 114 U. S. 218, 223. If these statutes did not give to the United States exclusive jurisdiction over the Park, the indictment did not charge a crime cognizable under the authority of the United States.

Second.—Where the District Court has jurisdiction of the person and the subject matter in a criminal prosecution, the writ of *habeas corpus* cannot be used as a writ of error. The judgment of conviction is not subject to collateral attack. *Ex parte Watkins*, 3 Pet. 193, 203; *Ex parte Parks*, 93 U. S. 18, 23; *Harlan* v. *McGourin*, 218 U. S. 442, 448; *McMicking* v. *Schields*, 238 U. S. 99, 107; *Riddle* v. *Dyche*, 262 U. S. 333, 335; *Craig* v. *Hecht*, 263 U. S. 255, 277. The scope of review on *habeas corpus* is limited to the examination of the jurisdiction of the court whose judgment of conviction is challenged. *Ex parte Siebold*, 100 U. S. 371, 375; *Ex parte Bigelow*, 113 U. S. 328, 331; *Matter of Gregory*, 219 U. S. 210, 213; *Glasgow* v. *Moyer*, 225 U. S. 420, 429; *Knewel* v. *Egan*, 268 U. S. 442, 445. But if it be found that the court had no jurisdiction to try the petitioner, or that in its proceedings his constitutional rights have been denied, the remedy of *habeas corpus* is available. *Ex parte Lange*, 18 Wall. 163, 178; *Ex parte Crow Dog*, 109 U. S. 556, 572; *In re Snow*, 120 U. S. 274, 285; *In re Coy*, 127 U. S. 751, 758; *Hans Nielsen, Petitioner*, 131 U. S. 176, 182; *In re Bonner*, 151 U. S. 242, 257; *Moore* v. *Dempsey*, 261 U S. 86, 91; *Johnson* v. *Zerbst*, 304 U. S. 458, 467.

In applying this principle, we have said that the court "has jurisdiction to render a particular judgment only when the offence charged is within the class of offences placed by the law under its jurisdiction". *In re Bonner, supra.* As it is the duty of the District Court, when the prosecution is brought before it, to examine the charge and ascertain whether the offense is of that class, the District Court is thus empowered to pass upon its own jurisdiction. This, under the applicable statute, may require consideration of the place where the offense is alleged to have been committed. The answer to that question may require the examination and determination of questions of fact and law and that determination may be the appropriate subject of appellate review. Thus if, construing a statute, a question of law is determined against the Government on demurrer to the indictment, the case may fall within the provisions of the Criminal Appeals Act. *United States* v. *Sutton*, 215

U. S. 291; *United States* v. *Soldana*, 246 U. S. 530. Or, if decided against the accused, the question may be reviewed by the Circuit Court of Appeals on appeal from the judgment of conviction. In considering the distribution of appellate jurisdiction under the former statute[2] permitting a direct writ of error from this Court to the District Court, when the question of the jurisdiction of the latter was the only question involved, we drew the distinction between the question of the jurisdiction of the District Court in that aspect and that of the jurisdiction of the United States. *Louie* v. *United States*, 254 U. S. 548, 550. There, on a charge of murder committed within the limits of an Indian reservation, the defendant contended that before the time of the alleged crime he had been declared competent and that the land on which the crime was alleged to have been committed "had been allotted and deeded to him in fee simple". "That the District Court . . . had jurisdiction to determine whether the *locus in quo* was a part of the reservation was not questioned" and the judgment was held to be reviewable by the Circuit Court of Appeals and not directly by this Court. See, also, *Pronovost* v. *United States*, 232 U. S. 487; *Pothier* v. *Rodman*, 261 U. S. 307, 311.

Where on the face of the record the District Court has jurisdiction of the offense and of the defendant and the defendant contends that on the facts shown the crime was not committed at a place within the jurisdiction of the United States, we have held that the judgment is one for review by the Circuit Court of Appeals in error proceedings and that the writ of *habeas corpus* is properly refused. *Toy Toy* v. *Hopkins*, 212 U. S. 542, 549. And, on removal proceedings, we have observed that in a case where the question "whether the *locus* of the alleged crime was within the exclusive jurisdiction of the United States demands consideration of many facts and seriously controverted questions of law", these matters "must be determined by the court where the indictment was found" and that "the regular course may not be anticipated by alleging want of jurisdiction and demanding a ruling thereon in a *habeas corpus* proceeding". *Rodman* v. *Pothier*, 264 U. S. 399, 402. See, also, *Henry* v. *Henkel*, 235 U. S. 219, 229. On the same principle, in *Walsh* v. *Archer*, 73 F. (2d) 197, where the indictment charged murder committed on board a vessel on the high seas, the

[2] 36 Stat. 827; 36 Stat. 1157, Jud. Code, sec. 238.

court affirmed an order dismissing a petition for *habeas corpus*, it being contended that the vessel at the time of the commission of the crime was within the State of California and under its jurisdiction, saying—"Whether the location of the alleged crime was upon the high seas and exclusively within the jurisdiction of the United States required consideration of many facts and seriously controverted questions of law, including the alleged error involving the jurisdiction of the court". *Id.*, p. 199.

But the rule, often broadly stated, is not to be taken to mean that the mere fact that the court which tried the petitioner had assumed jurisdiction, necessarily deprives another court of authority to grant a writ of *habeas corpus*. As the Court said in the case of *Coy, supra*, pp. 757, 758, the broad statement of the rule was certainly not intended to go so far as to mean, for example, "that because a federal court tries a prisoner for an ordinary common law offence, as burglary, assault and battery, or larceny, with no averment or proof of any offense against the United States, or any connection with a statute of the United States, and punishes him by imprisonment, he cannot be released by *habeas corpus* because the court which tried him had assumed jurisdiction". Despite the action of the trial court, the absence of jurisdiction may appear on the face of the record (see *In re Snow, supra; Hans Nielsen, Petitioner, supra*, p. 183) and the remedy of *habeas corpus* may be needed to release the prisoner from a punishment imposed by a court manifestly without jurisdiction to pass judgment.

It must never be forgotten that the writ of *habeas corpus* is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired. *Ex parte Lange, supra*. The rule requiring resort to appellate procedure when the trial court has determined its own jurisdiction of an offense is not a rule denying the power to issue a writ of *habeas corpus* when it appears that nevertheless the trial court was without jurisdiction. The rule is not one defining power but one which relates to the appropriate exercise of power. It has special application where there are essential questions of fact determinable by the trial court. *Rodman* v. *Pothier, supra*. It is applicable also to the determination in ordinary cases of disputed matters of law whether they relate to the sufficiency of the indictment or to the validity of the

statute on which the charge is based. *Id.; Glasgow* v. *Moyer, supra; Henry* v. *Henkel, supra.* But it is equally true that the rule is not so inflexible that it may not yield to exceptional circumstances where the need for the remedy afforded by the writ of *habeas corpus* is apparent. Among these exceptional circumstances are those indicating a conflict between state and federal authorities on a question of law involving concerns of large importance affecting their respective jurisdictions. *In re Lincoln,* 202 U. S. 178, 182, 183; *Henry* v. *Henkel, supra,* pp. 228, 229.

We think that there are such exceptional circumstances in this instance. There appear to be uncertainty and confusion with respect to the question whether offenses within the Chickamauga and Chattanooga National Park are triable in the state or federal courts. It is represented that murder cases have been tried in the state court as well as in the federal court. If the District Court which tried petitioner gave consideration to the question, it made no comment on the subject, as it rendered no opinion and apparently made no record of its proceedings aside from the indictment and judgment. The matter stood without any judicial explication and without appeal. If, as contended, there being no disputed questions of fact, a reading of the Georgia statute of consent and cession would show that the United States had not acquired jurisdiction so as to bring the offense charged in the indictment within the class of offenses cognizable in the District Court, we think that it was within the province of the court to which the application for *habeas corpus* was made to examine the question and to issue the writ in case the claim of want of jurisdiction in the trial court was found to be a valid one.

Third.—Our examination of the Georgia statutes leads to the conclusion that it is unnecessary to remand the case for the determination of the District Court but that it may be, and should be, disposed of at once by our decision.

The lands which are embraced within the Chickamauga and Chattanooga National Park, and lie within the exterior limits of the State of Georgia, were acquired under the provisions of the Act of Congress approved August 19, 1890, and supplementary legislation. 26 Stat. 333. The Act provided for the establishment of the Park "upon the ceding of jurisdiction by the legislature of the State of Georgia". The lands were acquired in 1891 and subsequent years. Some were acquired by purchase and some by condemnation. Consent was given and jurisdiction was ceded to the

United States by an Act of the Legislature of Georgia approved November 19, 1890. Georgia Laws, 1890-91, vol. 1, p. 199. The Act specifically reserved to the State of Georgia criminal jurisdiction in the ceded territory by the following proviso:

"*provided*, that this cession is upon the express condition that the State of Georgia shall so far retain a concurrent jurisdiction with the United States over said lands and roads as that all civil and criminal process issued under the authority of this State may be executed thereon in like manner as if this Act had not been passed; and upon the further express conditions, that the State shall retain its civil and criminal jurisdiction over persons and citizens in said ceded territory as over other persons and citizens in the State, and the property of said citizens and residents thereon, except land and such other property as the general government may desire for its use, and that the property belonging to persons residing within said ceded territory shall be liable to State and county taxes, the same as if they resided elsewhere, and that citizens of this State in said ceded territory shall retain all rights of State suffrage and citizenship;"

Later Acts of cession contained a similar reservation as to criminal jurisdiction.[3]

If the matter rested with these statutes, there would be no room for doubt that jurisdiction to punish for crimes committed on the lands within the Park remained with the State. See *James* v. *Dravo Contracting Co.*, *supra*. But in 1927, another cession act of a general character was passed by the state legislature, purporting to cede exclusive jurisdiction to the United States over any land "which has been or may hereafter be acquired for custom-houses, post-offices, arsenals, other public buildings whatever, or for any other purposes of government". Georgia Laws, 1927, p. 352. This Act reserved the right to serve civil and criminal processes but not criminal jurisdiction over offenses within the ceded territory.

The argument is strongly pressed that as this is a general act and there is no express repeal of, or specific reference to, the earlier special acts relating to the lands within the Park, it should not be regarded as yielding the jurisdiction which the earlier acts reserved to the State. But we find that the administrative construction is to the contrary. The administration of the Park was placed with the War Department[4] and it appears from its files that on July 14,

[3] Georgia Laws, 1893, p. 110; 1895, p. 77; 1901, p. 85; 1902, p. 110.

[4] Transferred to the National Parks Service, Department of the Interior by Executive Order No. 6166, June 10, 1933.

1930, upon a review of the pertinent legislation, the Judge Advocate General gave an opinion that the Act of 1927 "vests exclusive jurisdiction in the United States over that part of the Chickamauga and Chattanooga National Military Park located within the State of Georgia" and that violations of law occurring on the ceded lands are enforceable only by the proper authorities of the United States. As this administrative construction is a permissible one we find it persuasive and we think that the debated question of jurisdiction should be settled by construing the Act of 1927 in the same way.

On this ground, the judgment of the Circuit Court of Appeals, affirming the order of the District Court denying the petition for *habeas corpus*, is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.